IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
MARCH 26, 2008 Session

TSEGAI MESFIN v. DANNY CRUTCHFIELD d/b/a D. C. CONTRACTING GROUP

Direct Appeal from the Circuit Court for Davidson County
No. 06C2952 Amanda McClendon, Judge

No. M2007-01327-COA-R3-CV - Filed July 25, 2008

The parties to this appeal have been involved in several cases arising out of a single contract. In 1999, the plaintiff was awarded a judgment against the defendant in general sessions court for $14,999. Subsequently, three lawsuits were filed in chancery court based on the contract and the plaintiff's attempts to satisfy the judgment. In each case, the defendant argued that he had paid sufficient sums to the plaintiff to satisfy the judgment. The defendant then filed a motion in general sessions court seeking to have the judgment marked as satisfied. The motion was denied, and the defendant appealed to circuit court. The circuit court dismissed the case based on the doctrine of res judicata. The defendant appealed. We affirm.

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Circuit Court Affirmed and Remanded

ALAN E. HIGHERS, P.J.,W.S., delivered the opinion of the court, in which DAVID R. FARMER, J., and HOLLY M. KIRBY, J., joined.

Michael H. Sneed, Nashville, TN, for Appellant

John M. Cannon, Goodlettsville, TN, William P. Jones, Hendersonville, TN, for Appellee

OPINION

I. FACTS & PROCEDURAL HISTORY

In 1999, Tsegai Mesfin entered into a contract with Danny Crutchfield d/b/a D.C. Contracting Group for the construction of a garage on Mr. Mesfin's property. Pursuant to the original contract and a change order, the total contract price was $23,000. The contract further provided, in pertinent part:

> ** Any work other than specified on plans and specifications will be completed at an additional cost to owner. **
> ** Work doesn't include any site excavation, blasting, or hauling offsite. **

On or about October 8, 1999, D.C. Contracting Group filed a civil warrant in the general sessions court of Davidson County seeking a judgment against Mr. Mesfin for $15,000 for "breach of contract and/or services rendered." On December 14, 1999, the general sessions court entered judgment against Mr. Mesfin for $14,999.

On December 16, 1999, Mr. Mesfin filed a handwritten "Motion to dismiss and non suit lawsuit and judgment against Tsegai Mesfin for $14,999." The motion stated that Mr. Mesfin "has agreed to honor the contract with D.C. Contracting" and "would like to have contractor to build building," and he agreed to pay any additional costs that D.C. Contracting incurred for the project. The handwritten motion was purportedly signed by Mr. Mesfin and by Danny Crutchfield d/b/a D.C. Contracting Group. The general sessions court denied the motion on January 21, 2000.

On January 31, 2000, Mr. Mesfin filed another motion seeking relief from the judgment pursuant to Rule 60.02 of the Tennessee Rules of Civil Procedure. According to this motion, the previous motion to dismiss was "denied by the Court at the request of counsel for [D.C. Contracting Group]." Mr. Mesfin again asked the court to dismiss or non-suit the case, claiming that he had paid D.C. Contracting Group "some $21,000 for building a garage which has not been built." The motion was denied on June 21, 2000. No appeal was filed.

An execution was issued and levied on Mr. Mesfin's bank account, and D.C. Contracting Group received a check for $1,818.55 toward satisfaction of the judgment. On September 7, 2001, D.C. Contracting Group filed a "Complaint to Sell Real Property in Satisfaction of Judgment Debt" in the chancery court of Davidson County. The complaint alleged that $13,180.45 of the judgment debt owed by Mr. Mesfin remained unsatisfied, and a second execution against Mr. Mesfin's personal property had been returned nulla bona. D.C. Contracting Group requested that the court order the sale of a certain parcel of real property owned by Mr. Mesfin and apply the proceeds toward the judgment debt. Mr. Mesfin filed various pleadings in the case alleging that he had already paid $21,000 to D.C. Contracting Group, which he claimed was in excess of the original

contract price.[1] In his answer, Mr. Mesfin specifically requested that the court "set aside the judgment obtained against him" and dismiss D.C. Contracting Group's complaint to sell the real property. Following a hearing, on or about March 21, 2002, the chancellor ordered the clerk and master to sell the real property listed in the complaint. On September 26, 2002, however, the clerk and master filed a "Master Report" advising the court and the parties that D.C. Contracting Group had not made arrangements for the sale, such as scheduling matters and advancing the advertising costs. There are no other documents in the record concerning this case, but an order from a subsequent case states that this case was dismissed with prejudice on November 4, 2002.

On July 18, 2002, Mr. Mesfin filed a complaint in the chancery court of Davidson County seeking a judgment against D.C. Contracting Group for $23,587.77. The complaint alleged that D.C. Contracting Group performed inferior work in constructing Mr. Mesfin's garage. Mr. Mesfin claimed that he had paid $23,587.77 to D.C. Contracting Group, and that D.C. Contracting Group had obtained a judgment to sell Mr. Mesfin's land. This case was dismissed on February 6, 2004, for failure to prosecute.

On September 9, 2005, Mr. Mesfin initiated a third lawsuit in the chancery court of Davidson County. According to his complaint, a judgment lien was filed against his real property after the general sessions court entered judgment in favor of D.C. Contracting Group. Mr. Mesfin sought an order removing the judgment lien, alleging that he had "fully paid for all the work performed and materials supplied by the Defendant" and that D.C. Contracting Group was no longer entitled to assert the lien against his property. Specifically, Mr. Mesfin claimed that he paid $23,587.77 to D.C. Contracting Group, and that an additional $1,975.16 was taken by execution on his bank account, for a total of $25,562.90. Mr. Mesfin filed an affidavit stating that $15,189 of that amount was paid after the general sessions judgment was entered, and he attached cancelled checks dating from 1999 to January of 2000.

D.C. Contracting Group filed an answer asserting res judicata, among other things, as a defense. D.C. Contracting Group subsequently moved for summary judgment. On June 8, 2006, Chancellor Richard Dinkins entered an order granting summary judgment in favor of D.C. Contracting Group based on the doctrine of res judicata. The order stated, "The issues raised by the Plaintiff arise out of the General Sessions action and the two (2) prior Chancery Court actions, from which the Court finds that the Plaintiff could have brought these matters before the Court, but did not do so." The court declined to award sanctions under Rule 11.[2] Mr. Mesfin did not appeal the chancery court's ruling.

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[1] Mr. Mesfin also argued that he did not approve of the additional charges, that the work performed was "incomplete and totally unacceptable," and that the general sessions judgment against him was obtained by fraud.

[2] Mr. Mesfin subsequently filed a motion to alter or amend. The record before us contains a copy of an "order" denying the motion, but it is not signed by the chancellor or otherwise effective pursuant to Tennessee Rule of Civil Procedure 58.

On October 23, 2006, Mr. Mesfin filed a motion in general sessions court under the original case's docket number, entitled "Motion to Mark Judgement [sic] as Satisfied." The motion alleged that Mr. Mesfin had paid the entire amount of the judgment to D.C. Contracting Group, and Mr. Mesfin attached to the motion the cancelled checks from 1999 and January of 2000. The general sessions court denied Mr. Mesfin's motion on November 2, 2006. Mr. Mesfin then filed a notice of appeal to the circuit court under the original general sessions court docket number, and he filed a motion to set the case for hearing. D.C. Contracting Group filed a motion to dismiss with sanctions, asserting that the circuit court lacked jurisdiction because the general sessions judgment had become final, and that the matter was barred by res judicata. D.C. Contracting Group requested sanctions pursuant to Rule 11 for Mr. Mesfin's alleged filing of lawsuits without factual or legal basis.

Mr. Mesfin filed an affidavit in which he insisted that he had paid D.C. Contracting Group $13,214 "in satisfaction of the judgment," and that an additional $1975.16 was garnished from his checking account. He attached the same cancelled checks dated from December 1999 to January 20, 2000.

The attorney who had represented D.C. Contracting Group throughout these proceedings filed an affidavit stating that Mr. Mesfin presented some of the same checks at the original general sessions court hearing prior to entry of the judgment. He explained that the general sessions case was based on extra work performed by D.C. Contracting Group, and so the judgment debt was owed in addition to the amount paid for the original contract price. He stated that the payments D.C. Contracting Group received were not in satisfaction of the judgment, and that only $1,818.55 had been received in satisfaction of the judgment from the garnishment.

Following a hearing, the circuit court entered an order on March 28, 2007, dismissing the case on the basis of res judicata. After recounting the lengthy procedural history of the cases involved, the trial court's order provided:

> Defendant Mesfin's motion seeking to have the General Sessions judgment marked "satisfied" based on previous payments has been previously tried and decided by Chancery Court. Although Defendant Mesfin responded to Plaintiff's Motion to Dismiss with Sanctions, Defendant did not present an argument to this Court as to how this case is different from the original case in General Sessions and the subsequent cases in Chancery Court. The facts that were argued on this Motion to Dismiss are the same facts that have been previously argued. The Court finds that this matter is subject to *res judicata*.

The trial court granted D.C. Contracting Group's motion for sanctions and ordered Mr. Mesfin to pay its attorney's fees. On April 30, 2007, Mr. Mesfin filed a motion to alter or amend, in which he again insisted that the judgment had been paid in full. On May 14, 2007, before the trial court ruled on the motion to alter or amend, Mr. Mesfin filed a motion to reconsider. He again claimed that he

had paid D.C. Contracting Group more than the amount of the general sessions judgment and asked that the judgment lien be released. On May 29, 2007, the circuit court entered an order stating that all the issues raised by Mr. Mesfin were or could have been tried in the prior chancery court actions. The court denied Mr. Mesfin's motion and awarded D.C. Contracting Group additional attorney's fees for responding to the motions. In addition, the court ordered that any future filings in circuit court involving these parties must be presented to a special master for review and approval before they will be accepted. Mr. Mesfin timely filed a notice of appeal to this Court.

II. ISSUES PRESENTED

Mr. Mesfin presents the following issues, slightly reworded, for review:

1. Whether the doctrine of res judicata applies to prevent the court from inquiring into the factual issue of whether the judgment has been paid;
2. Whether Mr. Mesfin paid the general sessions judgment and is entitled to have the clerk mark the judgment as satisfied.

In addition, D.C. Contracting Group questions whether this appeal is frivolous.[3] For the following reasons, we affirm the decision of the circuit court.

III. STANDARD OF REVIEW

We review a trial court's conclusions of law under a *de novo* standard upon the record with no presumption of correctness for the trial court's conclusions. ***Union Carbide Corp. v. Huddleston***, 854 S.W.2d 87, 91 (Tenn. 1993) (citing *Estate of Adkins v. White Consol. Indus., Inc.*, 788 S.W.2d 815, 817 (Tenn. Ct. App. 1989)). A trial court's decision of whether a subsequent lawsuit is barred by principles of res judicata presents a question of law that this Court reviews *de novo*. ***In re Estate of Boote***, 198 S.W.3d 699, 719 (Tenn. Ct. App. 2005).

IV. DISCUSSION

A. Res Judicata

"Res judicata is a claim preclusion doctrine that promotes finality in litigation." ***In re Estate of Boote***, 198 S.W.3d 699, 718 (Tenn. Ct. App. 2005). The doctrine bars a second suit between the same parties or their privies on the same cause of action with respect to all the issues which were or could have been litigated in the former suit. ***Id.*** "A plaintiff may not, by disclaiming or failing to present a particular fact or theory, preserve such fact or theory to be used as a ground for a second suit." ***Patton v. Estate of Upchurch***, 242 S.W.3d 781, 791 (Tenn. Ct. App. 2007) (quoting *Barnett*

[3] In its brief on appeal, D.C. Contracting Group also argues that the trial court was correct in assessing sanctions against Mr. Mesfin. Mr. Mesfin does not raise any issue regarding the propriety of the sanctions entered by the trial court; thus, we will not address the issue.

v. Milan Seating Systems, 215 S.W.3d 828, 835 (Tenn. 2007)). A party asserting a res judicata defense must demonstrate: (1) that the previous judgment was rendered by a court of competent jurisdiction; (2) that the same parties were involved in both suits; (3) that the same cause of action was involved in both suits; and (4) that the underlying judgment was on the merits. ***Shell v. Law***, 935 S.W.2d 402, 408 (Tenn. Ct. App. 1996) (citing *White v. White*, 876 S.W.2d 837 (Tenn. 1994)). For purposes of res judicata, it has been stated that,

> [i]n order that a judgment or decree should be on the merits, it is not necessary that the litigation should be determined "on the merits," in the moral or abstract sense of these words. It is sufficient that the status of the action was such that the parties might have had their suit thus disposed of, if they had properly presented and managed their respective cases.

Grigsby v. City of Plainview, No. E2006-02269-COA-R3-CV, 2007 WL 3171134, at *4 (Tenn. Ct. App. Oct. 30, 2007) (quoting *Madyun v. Ballard*, 783 S.W.2d 946, 948 (Tenn. Ct. App. 1989)). The doctrine of res judicata only requires that there be a full and fair *opportunity* to litigate all issues arising out of the claim, and every applicable issue need not be actually litigated in order for res judicata to apply. ***Gerber v. Holcomb***, 219 S.W.3d 914, 918 (Tenn. Ct. App. 2006).

Res judicata is not only based on the principle that the same parties in the same capacities should not be required to litigate anew a matter which might have been determined and settled in a previous suit, but also that litigation should be determined with reasonable expedition and not be protracted through inattention and lack of diligence. ***Shanklin v. UT Med. Group, Inc.***, No. W1999-01982-COA-R3-CV, 2000 WL 33191374, at *1 (Tenn. Ct. App. Nov. 6, 2000) (citing *Jordan v. Johns*, 79 S.W.2d 798, 802 (Tenn. 1935)). Res judicata promotes judicial economy and the policy of favoring reliance on final judgments by minimizing the possibility of inconsistent decisions. ***Gerber***, 219 S.W.3d at 918. The doctrine of res judicata protects litigants and society from the expense and annoyance of interminable litigation about the same matter. ***Joiner v. Carter***, No. M2003-02248-COA-R3-CV, 2007 WL 1860706, at *3 (Tenn. Ct. App. Jun. 27, 2007). In other words, "a plaintiff is only entitled to one bite at the apple," and he may not relitigate the same claim again and again in hopes of a different result. ***Id.***; *see also* ***Gerber***, 219 S.W.3d at 918. It is immaterial that the two actions are tried on different theories, or instituted for different purposes seeking different relief. ***Gerber***, 219 S.W.3d at 919 (citing *Cotton v. Underwood*, 223 Tenn. 122, 442 S.W.2d 632, 635 (1969)). Res judicata is designed to give every litigant one, but only one, day in court. ***Batey v. D. H. Overmyer Warehouse Co.***, 60 Tenn. App. 310, 318, 446 S.W.2d 686, 689 (Tenn. Ct. App. 1969).

The only difference in the present case and the most recent case filed by Mr. Mesfin in chancery court is the type of relief sought. In this case, Mr. Mesfin seeks to have the actual judgment marked satisfied; in the previous case, he sought to have the judgment lien removed. In both cases, he alleged that he had satisfied the judgment based on the same checks, all of which were dated prior to January 20, 2000. On January 31, 2000, Mr. Mesfin had filed a Rule 60 motion in the general

sessions court asking that the judgment be set aside because he had already paid $21,000 to D.C. Contracting Group. The general sessions court denied his motion on June 21, 2000. The parties were then involved in a chancery court lawsuit in which Mr. Mesfin again argued that the general sessions judgment should be set aside because he had already paid $21,000 to D.C. Contracting Group. After a hearing, on March 28, 2002, the chancellor ordered that Mr. Mesfin's real property be sold to satisfy the judgment. However, it appears that the sale did not take place because of D.C. Contracting Group's failure to make the necessary arrangements. Based on these previous cases, Chancellor Dinkins granted summary judgment to D.C. Contracting Group on the basis of res judicata, noting that the general sessions judgment had not been appealed, and the parties had been involved other chancery court actions in which Mr. Mesfin could have raised the issue of whether his checks proved that he had satisfied the judgment. In the case before us, the circuit court concluded that Mr. Mesfin was attempting to present "the same facts that have been previously argued" in the other cases. We agree with the circuit court's conclusion and affirm its dismissal of the case on the basis of res judicata.

B. Frivolous Appeal

D.C. Contracting Group seeks an award of attorney's fees on appeal, contending that this appeal is frivolous. Tennessee Code Annotated section 27-1-122 provides:

> When it appears to any reviewing court that the appeal from any court of record was frivolous or taken solely for delay, the court may, either upon motion of a party or of its own motion, award just damages against the appellant, which may include but need not be limited to, costs, interest on the judgment, and expenses incurred by the appellee as a result of the appeal.

The decision to award damages for the filing of a frivolous appeal rests solely in the discretion of this Court. ***Whalum v. Marshall***, 224 S.W.3d 169, 180-81 (Tenn. Ct. App. 2006) (citing *Banks v. St. Francis Hosp.*, 697 S.W.2d 340, 343 (Tenn. 1985)). "Successful litigants should not have to bear the expense and vexation of groundless appeals." ***Id.*** (quoting *Davis v. Gulf Ins. Group*, 546 S.W.2d 583, 586 (Tenn. 1977)). An appeal is frivolous when it has "no reasonable chance of success," or is "so utterly devoid of merit as to justify the imposition of a penalty." ***Id.*** (citing *Combustion Eng'g, Inc. v. Kennedy*, 562 S.W.2d 202, 205 (Tenn. 1978); *Jackson v. Aldridge*, 6 S.W.3d 501, 504 (Tenn. Ct. App. 1999)). We exercise our discretion under this statute sparingly so as not to discourage legitimate appeals. ***Id.*** However, after reviewing the record and considering the procedural history of this case, we find this appeal so devoid of merit as to justify an award of damages against the appellant for the filing of a frivolous appeal. We remand the case for the trial court to assess appropriate damages as set forth in Tennessee Code Annotated section 27-1-122.

V. CONCLUSION

For the aforementioned reasons, we affirm the decision of the circuit court and remand for the entry of an award of damages in favor of the appellee, Danny Crutchfield d/b/a D.C. Contracting Group, to include the attorney's fees and expenses incurred in defending this appeal. Costs of this appeal are taxed to the appellant, Tsegai Mesfin, and his surety, for which execution may issue if necessary.

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ALAN E. HIGHERS, P.J., W.S.